IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.33 OF 2005

Shri Ranchodbhai P. Patel)
age 64 years, a partner of)
M/s.Sonal Corporation, having)
its office at 101/A, Shyam)
Nirmal Apartments, Narsing)
Lane, Malad (West),)
Mumbai 400 064.)...Petitioner

Versus

1. State of Maharashtra)
2. Commissioner of Police,)
Brihanmumbai, Mumbai.)
3. Deputy Commissioner of)
Police, Malad Division,)
Mumbai.)
4. Assistant Commissioner of)
Police, Malad Division,)
Mumbai.)

5. Senior Inspector,)
Malad Police Station,)
Malad (West), Mumbai.)
6. Shri Arun Ghag,)
Assistant Police Inspector)
Malad Police Station,)
Mumbai.)...Respondents

Mr.Rajiv Patil with Milind S.Sawant for petitioner
Mr.D.S.Mhaispurkar, APP for Respondents.

CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.
DATE : 28TH FEBRUARY, 2005.

ORAL JUDGMENT : (Per Khandeparkar, J.)

1. Heard. Rule. By consent the rule is made returnable forthwith.

2. By the present Petition the Petitioner is seeking direction to transfer the investigation which

has been carried out by the Police Inspector at Malad (West) Police Station, Mumbai in relation to C.R. No.622 of 2004 dated 14.12.2004 to Crime Branch, CID, Mumbai. The grievance of the petitioner is that the Investigating Agency at the Police at Malad (West) Police Station is not investigating into the matter in the manner and with the speed with which it is required to be investigated, as also showing undue favouritism to the accused persons and being totally lethargic in apprehending the persons against whom cognisable offence is disclosed under the said complaint.

3. We have perused the affidavit in reply filed by the Investigating Officer Shri Raju Amarraj Naik, the Inspector of Police attached to Malad Police Station, Mumbai and also we heard the learned A.P.P. as well as the advocate for the Petitioner.

4. Undisputedly consequent to the complaint filed by the Petitioner and the preliminary enquiry made by the Police Authorities FIR came to be lodged on 14.12.2004 being C.R. No.622 of 2004 under Section 143, 144, 145, 148, 149, 447, 431, 342, 363, 427 and 506 of Indian Penal Code against Iqbal Attarwala, Atul Patel,

Lalbhai R. Shah and unknown persons numbering 35-40. It is also revealed that the preliminary enquiry conducted pursuant to the documents produced by the parties disclosed the cognisable offence and therefore, the said FIR came to be registered. It is further revealed that on 16.12.2004 statement of two eye witnesses were also recorded. Further statement was recorded of one more person on 19.12.2004 and some more documents were perused having produced by the Petitioner on 26.12.2004.

5. Undisputedly the allegations against the accused were that the petitioner was forcibly dispossessed of the property, theft, abduction of the security guard etc. The complaint was essentially against the activities of the builders. The further information disclosed to the Court is that accused Iqbal Attarwala left India on or about 5.1.2005 and the same was learnt by the Investigation Officer on 7.1.2005. Accused Lalbhai R. Shah is stated to have been interrogated on 14.1.2005 having called to the Police Station pursuant to a telephonic message issued to him and that pursuant to the interrogation he was arrested in the matter. Meanwhile a statement of the owner of the Tata Indica

also came to be recorded on 27.1.2005. As regards accused Atul Patel, the affidavit filed today reads thus-

> "I state that during the course of investigation it was revealed that Atul Patel named in F.I.R. had purchased the property from the other owner - Yasin Ismail & Ors. and had developed the said property, thereafter, he was not having any concerned with the remaining piece of land of the petitioner. However, the arrested accused Lalbhai R. Shah had represented him that the said Atul Patel has right over the land belonging to the petitioner and pursued him to sell the same to Lalbhai R. Shah and thereafter, the said Lalbhai Shah had sold the said land to Iqbal Attarwala i.e. the accused named by the Petitioner.
>
> I state that I have also procured the documents i.e. the declaration cum indemnity dated 19.4.2004 executed by Atul Patel in favour of the Lalbhai R. Shah wherein the said Atul Patel had categorically stated that he had no

> concerned of whatsoever in nature and due to the influence of the said Lalbhai Shah he had only sold the title of the land and he was not knowing that the said land was vacant or in anybody’s possession. Hence, the said Atul Patel has not arrested so far."

It is also submitted by the learned APP after taking instructions from the Investigating Officer, who is present in the Court, that there is sufficient material to file the charge-sheet against the accused persons named in the complaint and the charge-sheet would be filed in due course, though in the affidavit filed by the Investigating Officer it has been stated that "I state that as on today, there is material to connect the accused and file the charge sheet, however, the investigation will proceed and will complete effectively only after the arrest of the wanted accused." It is also submitted that consequent to the arrest of accused Iqbal, the names of other accused if revealed necessary action will have been taken against them and that the Investigating Agency may have to recover other materials stated to have been stolen from the site.

6. To the specific query as to whether there was any call letter sent to the accused Iqbal, consequent to the registration of F.I.R. disclosing cognisable offence having committed by the said Iqbal, from 14.12.2004 still he left India, the learned APP on taking instructions from Investigating Officer, informed that no such call letter was ever sent and case diary does not disclose any attempt on the part of the Investigating Officer to apprehend or arrest the accused Iqbal during the said period. At the same time it is also submitted by the learned APP on taking instructions from Investigating Officer that during the period from 14.12.2004 till 14.1.2005 apart from perusal of the documents produced by the Petitioner on 26.12.2004 and recording of statement of owner of Tata Indica, no other investigation was carried out in the matter. It is also submitted by the learned APP on taking instructions from Investigating Officer that the Investigation Officer has learnt about Iqbal having left India only on 7.1.2005. It has been further informed that said Iqbal is likely to come to India on 7.3.2005 and the said fact has been learnt by the Investigating Officer in the course of hearing of Civil Suit and that too, at the instance of

one of the advocate for the petitioner appearing in the trial court. The learned advocate for the Petitioner has however, submitted that no such information was given on behalf of the petitioner or by any of his advocates.

7. Once it is revealed and admitted on behalf of the Investigating Agency that inspite of cognizable offence having been revealed from the complaint and the officer being prima facie satisfied about such offence having been committed by the person whose name has been recorded in the complaint, and there is absolutely no explanation given by the Investigating Officer for not taking any steps to apprehend such person immediately or for a period about 20 days from the date of recording of F.I.R. in relation to cognizable offence against such person, the same apparently justifies the request for transfer of the investigation to some other agency. There is no material on record to disclose even to suggest an attempt on the part of the Investigating Officer to call such person to the Police Station and to interrogate him in the matter. Once the cognizable complaint is lodged and prima facie the Investigating Officer is satisfied

about the commission of such offence by the accused, the same being revealed from the materials placed before the Investigating Officer, one fails to understand the reason for failure on the part of the Investigating Officer to take appropriate steps to apprehend such person. To the specific query as to why no steps were taken to contact the accused Iqbal prior to he leaving the country, there is absolutely no explanation, leave aside satisfactory reply from the Investigating Officer. The affidavit filed by the Investigating Officer nowhere discloses that during the period from 14.2.2004 till 5.1.2005 the Investigating Officer was so busy with some other important matter that he had no time to attend to the case in hand and/or to apprehend accused during the said period.

8. Undoubtedly the allegations in the complaint are of serious nature and it is not the case of the Investigating Officer that the complaint disclosed offence of non-cognizable nature. On the contrary the affidavit in reply discloses that the Investigating Officer was prima facie satisfied about the commission of cognisable offence by the accused person and yet no appropriate action against them has been taken. There

is total lethargy on the part of the Investigating Officer in dealing with the matter. Being so, the petitioner is justified in requesting for the transfer of the investigation to the Crime Branch, CID, Mumbai in the case in hand.

9. The concerned authorities of Respondent No.1 to take appropriate note of the observations made herein above and to enquire into the lapses on the part of the concerned Investigating Officer viz. Raju Amarraj Naik, the Inspector of Police, attached to Malad Police Station, Mumbai and if found guilty to take appropriate action.

10. The Petition therefore succeeds and the same is allowed in terms of prayer clause (b). The Investigating Officer to surrender all the papers forthwith to the Crime Branch, CID, Mumbai without any delay and authority to comply with the direction as stated above.

. Rule is made absolute in above terms with no order as to costs.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)

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